

DC 11A
Thornton
DC #: 04-12706
Honorable Rya W. Zobel

United States Court of Appeals
For the First Circuit

No. 06-2424

GREGORY DONNELLY,

Petitioner, Appellant,

v.

BERNARD BRADY, ACTING SUPERINTENDENT AT
OLD COLONY CORRECTIONAL CENTER,

Respondent, Appellee.

Before

Lynch, Circuit Judge,
Campbell and Selya, Senior Circuit Judges.

JUDGMENT

Entered: October 2, 2007

We have carefully reviewed the record in this case, including the briefs of the parties. We affirm the dismissal of the petition, essentially for the reasons given by the district court in its memorandum of decision dated August 22, 2006. We add only the following.

Whether petitioner's challenge is to his 1993 conviction and sentence or to the 1994 state appeals court decision correcting his sentence, the judgment became final before the effective date of AEDPA. Thus, the limitations period ended, at the latest, in October 1997, one year after the Supreme Judicial Court denied further review of petitioner's state habeas petition. Under state law, see Rodriguez v. Spencer, 412 F.3d 29, 33 (1st Cir. 2005), his 2002 motion to withdraw his guilty plea was a collateral attack, see, e.g., Commonwealth v. Lopez, 426 Mass. 657, 662 (1998), and, thus, did not toll the limitations period.

Affirmed.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

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Margaret Carter
Date 1/4/08

[cc: Gregory Donnelly, Randall Ravitz AAG]